

REMARKS

Status of the Application:

Claims 1-5, 8-13, 15, 16, 18, 19 and 23-28 were pending in the application at the time the Office Action was mailed. Claims 13, 15 and 24-28 were rejected; claims 16 and 18 were objected to; and claims 1-3, 5, 8-12, 19 and 23 were allowed. Upon entry of this amendment, claims 4, 6, 7, 13-15, 17, 20-22, 24, 26 and 28 will have been cancelled; claims 16 and 25 will have been amended; and new claims 29-48 will have been added. Therefore, claims 1-3, 5, 8-12, 16, 18, 19, 23, 25, 27, and 29-48 will be pending in the application. Consideration of these claims is respectfully requested.

Claim Objections

Claims 16 and 18 were objected to as being dependent upon a rejected base claim. According to the examiner, these claims would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claim 16 (from which claim 18 depends) has been amended as suggested by the examiner. Accordingly, withdrawal of this objection is requested.

Rejection Under 35 U.S.C. 112 Second Paragraph

Claims 25-27 were rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In particular, the Office Action states:

Claims 25 recites the limitation "said at least one construct" in the fourth line of the claim. There is insufficient antecedent basis for this limitation in the claim. There is no indication in the claim that more than one construct is integrated into the chromosome of the bioreporter bacterium,

or what the nature of the "potential multiple constructs" encompasses. Furthermore, there does not appear to be clear support for the integration of multiple constructs into a host cell to construct a bioreporter bacterium. Thus it is unclear if Applicant means to indicate "wherein said construct" in reference to the instant limitation, or if there is some additional agenda contemplated by the term said at least one construct." It would be remedial to indicate "wherein said construct" in place of said at least one construct."

Claim 25 (from which claim 27 depends) has been amended herein to recite "wherein said construct" in place of "said at least one construct." Claim 26 has been cancelled.

Withdrawal of this rejection is therefore respectfully requested.

Rejection Under 35 U.S.C. 112 First Paragraph

Claims 24, 26 and 28 were rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Claims 24, 26 and 28 have been cancelled in this amendment. Accordingly, applicants respectfully request withdrawal of this rejection.

Rejection Under 35 U.S.C. 103

Claims 13 and 15 were rejected under 35 U.S.C. 103(a) as being unpatentable over Simpson (US 6,117,643 as cited in the previous Office Action) in view of Lyngberg (IDS reference C-13, as cited in the previous Office Action) as set forth in the previous Office Action. Claims 13 and 15 have been cancelled in this amendment. Withdrawal of this rejection is respectfully requested.

New Claims 29-48

New claims 29-48 are supported throughout the application. For example, the subject matter of independent claims 29, 34, 39, and 44 finds support in Example 7 at pages 23-25 of the specification.

Conclusion:

The currently pending claims are supported throughout the specification and are patentable over the prior art. No new matter has been added. Allowance of the application respectfully requested.

This amendment is accompanied by a petition for retroactive extension of time. The Commissioner is hereby authorized to charge any fee for the newly added claims and any underpayment or credit any overpayment of fees under 37 CFR 1.16 or 1.17 as required by this paper to Deposit Account 50-3110.


The examiner is invited to call the undersigned if clarification is needed on any matter within this amendment, or if the examiner believes a telephone interview would expedite the prosecution of the subject application to completion.

Respectfully submitted,

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